

### **REMARKS**

Claims 1-6, 9-16, and 18-28 were pending in the application. Applicants have cancelled claims 1-6, 9-16, and 18-28 from further consideration in this application. Applicants respectfully reserve the right to pursue these and other claims in one or more continuations and/or divisional patent applications. New claim 30 has been added. Applicant respectfully requests allowance of new claim 30.

### **CLAIM REJECTIONS UNDER 35 USC §103**

The Office Action rejected claims 1-4, 9, 18-20 under 35 USC 103(a) as being unpatentable over *Brothers et al.* (US 6,789,182) in further view of *Lenny et al.* (US 6,600,614), in further view of *Koike* (US 6,801,138).

Claims 1-4, 9, and 18-20 have been canceled, thus mooted their rejection.

The Office Action rejected claims 5-6, 10, and 21-22 under 35 USC 103(a) as being unpatentable over *Brothers et al.* (US 6,789,182) in further view of *Lenny et al.* (US 6,600,614) in further view of *Koike* (US 6,801,138) in further view of *Lewis* (US 6,430,712).

Claims 5-6, 10, and 21-22 have been cancelled, thus mooted their rejection.

The Office Action rejected claims 11, 23, and 25 under 35 USC 103(a) as being unpatentable over *Brothers et al.* in further view of *Koike*.

Claims 11, 23, and 25 have been canceled, thus mooted their rejection.

The Office Action rejected claims 12-16, 24, and 27-28 under 35 USC 103(a) as being unpatentable over *Brothers et al.* in further view of *Koike* and further in view of *Lenny et al.* (US6,600,614).

Claims 12-16, 24, and 27-28 have been canceled, thus mooted their rejection.

The Office Action rejected claim 26 under 35 USC 103(a) as being unpatentable over *Brothers et al.* in further view of *Koike* in further view of *Lewis et al.*

Claim 26 has been canceled, thus mooted its rejection.

However, new claim 30 includes many of the limitations of the canceled method claims 12-16. Therefore, the rejection of those claims is addressed herein.

New claim 30 is not rendered obvious over the cited references because the cited references in combination neither teach nor suggest all of the claimed elements of claim 30.

Moreover, the combination of references was not proper because there was no evidence of a teaching or suggestion to combine ALL of the references. One "cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fine*, 837 F.2d 1071, 1075, 5 USPQ2d 1780, 1783 (Fed. Cir. 1988). This rejection is a classical use of hindsight because the only thing that unites the three cited references is the claim at issue.

Even after the Supreme Court's decision in *KSR International v. Teleflex*, 550 U.S. \_\_\_\_ (2007), the use of hindsight is not permitted in determining obviousness. Thus, the Court said that: "As is clear from cases such as Adams [383 U.S. 39 (1966)], a patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was,

independently, known in the prior art.” *KSR International v. Teleflex, Supra*. Here the Examiner has chosen to use an alleged motivation to combine three different references. However, there is no evidence of any such motivation. The stated “motivation” in the Office Action is: “because it [the combination] would resolve the overall issues with an increasing [sic., increasingly] complex and larger network that traditionally would [have] required a highly-skilled network administrator to provide a systematize the knowledge of networking expert so that common problems can be detected, isolated and repaired automatically or by a less-skilled personnel.”

That is a general statement that is true in many cases; it is not a motivation to combine the references as suggested by the Examiner. If it would have been obvious, it would not have required a combination of the three references (Brothers, Koike, and Lenny) to find all of the claimed elements. If anything, that fact is actually objective evidence of non-obviousness. For the foregoing reasons, Applicant respectfully requests allowance of the pending claims.

Respectfully submitted,



Michael J. Buchenhorner  
Reg. No. 33,162

E-filed on Date: March 15, 2008

Michael Buchenhorner, P.A.  
8540 S.W. 83 Street  
Miami, Florida 33143  
(305) 273-8007 (voice)  
(305) 595-9579 (fax)